



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TRI M. NGUYEN
FOR
ANNA FARM
Unpermitted**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-268, between the State Water Control Board and Tri M. Nguyen, regarding the Anna Farm, for the purpose of resolving certain violations of the Virginia Ground Water Management Act of 1992 (Va. Code § 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10, *et seq.*).

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Act" means the Ground Water Management Act of 1992, Va. Code §§ 62.1-254, *et seq.*
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means the Anna Farm, a poultry farm located at 24164 Mary N Smith Road in Accomack, Virginia.

6. "Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. 9 VAC 25-610-10.
7. "Ground Water Management Area" means any area declared by the Board to have met any of the conditions in 9 VAC 25-610-70 and the Board determines that the public welfare, safety and health require that regulatory efforts be initiated.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country. 9 VAC 25-610-10.
11. "Permit" means Ground Water Withdrawal Permit No. GW0079100 which was issued under the State Water Control Law and the Regulations to Tri M. Nguyen on April 8, 2020 and which expires on April 7, 2035, and means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.
12. "Regulations" means the Ground Water Withdrawal Regulations, 9 VAC 25-610-10 et seq.
13. "Tri M. Nguyen" means Mr. Tri M. Nguyen, the current owner and operator of the Facility. Tri M. Nguyen is a "person" within the meaning of Va. Code § 62.1-44.3.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Tri M. Nguyen owns and operates the Facility in Accomack County, Virginia. Accomack County is located in the Eastern Shore ground water management area as declared in 9 VAC 25-600-20.
2. On December 28, 2018, Tri M. Nguyen applied for a groundwater withdrawal permit for the Facility. Tri M. Nguyen has ten wells as part of the distribution system, serving eight

chicken houses with five flocks a year. Tri M. Nguyen applied for a groundwater withdrawal permit to allow for a groundwater withdrawal of approximately 2 million gallons a month and 7.5 million gallons a year.

3. On August 7, 2019 and August 12, 2019, DEQ conducted a site inspection of the Facility. Daily Meter readings provided on Anna Farm Mortality Charts and Flow Meters Forms indicated that withdrawals from the groundwater withdrawal system were 18,230,400 gallons in July and 12,105,100 gallons in August.
4. Va. Code § 62.1-258 and 9 VAC 25-610-40(A) of the Regulations prohibit the withdrawal of groundwater within a ground water management area without a permit.
5. On August 15, 2019, DEQ issued NOV No. 19-08-OWS-001 to Tri M. Nguyen for operating a groundwater withdrawal system in excess of 300,000 gallons a month without a permit.
6. On August 28, 2019, DEQ sent a Request of Information (RFI) to Tri M. Nguyen, requesting daily water usage since the start of operations, per house, at the Facility.
7. On August 29, 2019, Tri M. Nguyen's consultant responded to the RFI by stating that, "that the mortality chart sheets and meter totals were calculated together for each house". This response raised additional questions because the consultant stated that there are 45,500 chickens per house with an average water use of 2,500 to 3,000 gallons per day used, for a total usage amount of 79,530 gallons per month. After additional inquires and questions regarding the validity of the data, their consultant informed DEQ that they were no longer representing Tri M. Nguyen.
8. On October 2, 2019, Tri M. Nguyen's new consultant responded to the RFI and provided the following information:
 - Two flocks were put in eight chicken houses, 46,600 chickens per house
 - Flock one was from April 25, 2019 through June 17, 2019 (53 days)
 - Flock two was from July 11, 2019 through September 2, 2019 (53 days);
 - There were currently no chickens in any houses and the Facility was not operating; and the
 - Groundwater withdrawals were as follows:

Month	Volume (Gallons)
April 2019	64,612
May 2019	618,002
June 2019	461,485
July 2019	508,298
August 2019	1,198,256
September 2019	42,847
Total: 2,893,500	

9. On December 23, 2019, DEQ discussed corrective actions measures and a proposed penalty of \$258,300. Tri M. Nguyen asked that DEQ assess his inability to pay the penalty as required in Va. Code 62.1-44.15(8b).
10. On February 4, 2020, DEQ determined that the Tri M. Nguyen had an inability to pay any of the gravity based portion of the civil penalty. As a result, DEQ is only capturing the economic benefit of noncompliance in Section D below.
11. On April 8, 2020, DEQ issued the Groundwater Withdrawal Permit (GW0079100) to Tri M. Nguyen for the operation of the Facility.
12. Based on the information cited above, the Board concludes that Tri M. Nguyen has violated Va. Code § 62.1-258 and 9 VAC 25-610-40(A).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tri M. Nguyen, and Tri M. Nguyen agrees to:

1. Pay a civil charge of \$13,000 in settlement of the violations cited in this Order, to be paid as follows:

Due Date	Civil Charge
10/10/2020	\$1,625.00 or balance
01/10/2021	\$1,625.00 or balance
04/10/2021	\$1,625.00 or balance
07/10/2021	\$1,625.00 or balance
10/10/2021	\$1,625.00 or balance
01/10/2022	\$1,625.00 or balance
04/10/2022	\$1,625.00 or balance
07/10/2022	\$1,625.00 or balance

- a. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment. Within 15 days of receipt of such letter, Tri M. Nguyen shall pay any remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

- b. Payment of the civil charge shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Tri M. Nguyen shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Tri M. Nguyen shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tri M. Nguyen for good cause shown by Tri M. Nguyen, or on his own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tri M. Nguyen admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tri M. Nguyen consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tri M. Nguyen declares he has received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992 and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tri M. Nguyen to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the

Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tri M. Nguyen shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Tri M. Nguyen shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Tri M. Nguyen shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tri M. Nguyen. Nevertheless, Tri M. Nguyen agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Tri M. Nguyen has completed all of the requirements of the Order;
 - b. Tri M. Nguyen petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tri M. Nguyen.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tri M. Nguyen from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tri M. Nguyen and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. Any documents to be submitted pursuant to this Order shall be submitted by Tri M. Nguyen or an authorized representative of Tri M. Nguyen.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By his signature below, Tri M. Nguyen voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

Jutta Schneider

Digitally signed by: Jutta Schneider
DN: CN = Jutta Schneider email = jutta.
schneider@deq.virginia.gov C = US OU = VDEQ
Date: 2020.07.29 09:09:12 -05'00'

Jutta Schneider
Water Planning Division Director
Department of Environmental Quality

Department of Environmental Quality

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Tri M. Nguyen for Anna Farm; Unpermitted

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Tri M. Nguyen voluntarily agrees to the issuance of this Order.

Date: 5/22/2020 By: 
Tri M. Nguyen

Commonwealth of Virginia

City/County of Accomack

The foregoing document was signed and acknowledged before me this 22 day of
May, 2020, by Tri M. Nguyen.


Notary Public

7612202
Registration No.

My commission expires: 3-31-22

Notary seal:

